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Gumer & Gilmer, of Charlottesville, for appellant.

Hanckel & Hanckel and *Perkins & Perkins*, all of Charlottesville, for appellee.

GENERAL BOARD OF STATE HOSPITALS FOR THE INSANE *v.* ROBERTSON.

Nov. 20, 1913.

[79 S. E. 1064.]

1. Insane Persons (§ 93*)—Right of Action—Guardian.—Under Code 1904, §§ 1697, 1702, declaring that the committee of an insane person shall be entitled to his custody and control, shall take possession of and manage his estate, and may sue and be sued in respect thereto, the committee of an insane person committed to a hospital for care, maintenance, and treatment, who is a beneficiary of a trust fund held and administered by the hospital, may maintain a suit to enforce the trust and protect the property against misappropriation.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. § 163; Dec. Dig. § 93.* 7 Va.-W. Va. Enc. Dig. 695; 14 Va.-W. Va. Enc. Dig. 560; 15 Va.-W. Va. Enc. Dig. 506.]

2. States (§ 191*)—Suits against—Consent to Be Sued.—A suit against a state hospital for the insane in its public governmental capacity is a suit against the state which cannot be maintained by an individual unless the state waives its immunity and submits itself to the jurisdiction of the courts.

[Ed. Note.—For other cases, see *States*, Cent. Dig. §§ 179-184; Dec. Dig. § 191.* 12 Va.-W. Va. Enc. Dig. 738; 14 Va.-W. Va. Enc. Dig. 515; 15 Va.-W. Va. Enc. Dig. 920.]

3. States (§ 191*)—Suits against—Hospital for Insane—Enforcement of Trust.—A state hospital for the insane, which in its private capacity has accepted a testamentary trust, stands upon the same footing with respect to it as any other trustee, and is suable by a beneficiary.

[Ed. Note.—For other cases, see *States*, Cent. Dig. §§ 179-184; Dec. Dig. § 191.* 12 Va.-W. Va. Enc. Dig. 738; 14 Va.-W. Va. Enc. Dig. 515; 15 Va.-W. Va. Enc. Dig. 920.]

4. States (§ 87*)—Property of State Institutions—Control by State.—As to property held by public corporations for public purposes the power of the Legislature is supreme, but, while it may prohibit such corporations from accepting property as trustee under a private grant, yet when the trust has once been accepted it cannot divert it to purposes other than that of the trust.

[Ed. Note.—For other cases, see *States*, Dec. Dig. § 87.* 3 Va.-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

W. Va. Enc. Dig. 210; 14 Va.-W. Va. Enc. Dig. 235; 15 Va.-W. Va. Enc. Dig. 199.]

5. Constitutional Law (§ 278*)—Due Process of Law—Deprivation of Beneficial Interest in Trust Company.—Where land was given to a state hospital in trust to provide extra comforts for patients therein, act of the General Assembly approved February 20, 1906 (Laws 1906, c. 48), directing its special board of directors, under supervision of the general state board, to construct on such land buildings suitable for a colony of epileptic patients, and Act March 12, 1908 (Laws 1908, c. 195), providing that if the general board shall think it proper the hospital should sell such land and purchase other land for the same purpose, were unconstitutional and void as a deprivation of property rights in the trust fund without due process of law, and would be so whether the trust was legal or not, since if unlawful the property would be in the heirs of the donor.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 763, 765, 767-770, 772-777, 779-806, 808-810, 816-824, 907-924, 942; Dec. Dig. § 278.* 3 Va.-W. Va. Enc. Dig. 210; 14 Va.-W. Va. Enc. Dig. 235; 15 Va.-W. Va. Enc. Dig. 199.]

6. Insane Persons (§ 92*)—Suit—Parties.—Where a will gave real property in trust to a hospital for specified purposes and was duly admitted to probate, and in an action by the committee of an insane patient of such hospital to protect his beneficial rights and prevent a misappropriation of the fund the validity of the will was not questioned, the heirs at law were not necessary parties.

[Ed. Note.—For other cases, see Insane Persons, Cent. Dig. §§ 161, 162; Dec. Dig. § 92.* 7 Va.-W. Va. Enc. Dig. 695.]

7. States (§ 215*)—Costs—Persons Liable—Public Officers.—The trustees of a state hospital and the general board of the state hospital for the insane, who are public officers of the state represented by the Attorney General, and having no personal interest in a suit to protect the beneficial rights of a patient in a trust fund held by the hospital, were not liable to costs where an adverse judgment was rendered against them.

[Ed. Note.—For other cases, see States, Cent. Dig. § 203; Dec. Dig. § 215 * 3 Va.-W. Va. Enc. Dig. 617.]

Appeal from Circuit Court, Augusta County.

Action by A. Stuart Robertson, committee of Joseph S. Rowe, an insane person, against the General Board of State Hospitals for the Insane, the Western State Hospital, and others. Judgment for plaintiff, and defendants appeal. Affirmed.

Caskie & Caskie, of Lynchburg, and the *Attorney General*, for appellants.

Timberlake & Nelson, of Staunton, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.